IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

WA.No. 2583 of 2005

AGAINST THE JUDGEMENT/ORDER IN WPC.32226/2004 Dated 25/07/2005
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APPELLANTS: RESPONDENTS:
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1. UNION OF INDIA, REPRESENTED BY
SECRETARY, MINISTRY OF DEFENCE,
NEW DELHI-110 011.

2. THE CHIEF CDA (PENSION)
G-3/VIII SECTION, ALLAHABAD (U.P.)

3. OFFICER-IN-CHARGE ASC RECORDS,
(M.T.) BANGALORE-560 007.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL,ADDL.CGS

RESPONDENTS: PETITIONER:

SAJEESH KUMAR. K.,
S/O. K. BALAN NAIR, `SHEEBALAYAM',
POST NALUTHARA, MAHI-673 320.

BY ADV. SRI.AVM.SALAHUDIN
SRI.A.VISWANATHAN NAIR

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 06/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S.RADHAKRISHNAN & A.K.BASHEER, JJ.

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W.A.No.2583 OF 2005

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Dated this the 6th day of September, 2007

JUDGMENT

Radhakrishnan, J

This Writ Appeal is preferred by Union of India and others aggrieved by the judgment in Writ Petition 32226/04. Writ petition was preferred by respondent herein seeking a writ of certiorari to quash Exts.P1 to P4 orders and also for a declaration that the petitioner is entitled to disability pension with interest. Learned Single Judge placing reliance on a full bench decision of this court in **Baby v. Union of India & Others [2003 (3) KLT 362]** and taking note of the report of the medical board took the view that the disease of the petitioner was not constitutional but was aggravated by military service. Holding so, direction was given to the Union of India to compute the disability pension due to the petitioner in accordance with rules and pay the same to him with arrears within a specified time.

2. The counsel appearing for the appellant submits that the learned Single Judge has not considered the fact that any disease or injury arisen during military service does not necessarily become attributable to or aggravated by military service. The apex court in a recent judgment in **Controller of Defence Accounts (Pension) v. Balachandran Nair [2005 (4) KLT 703]** reversed the decision of the High Court and held that if the opinion of the Medical Board is to the effect that the illness suffered by a military servant was not attributable to the military service then it has to be accepted unless otherwise established by the claimant. We have perused the medical report produced before this court. Medical report clearly states that the disability of the petitioner is neither attributable to nor aggravated by military service, but constitutional one.

3. Similar issue came up for consideration before this court in W.A.1459 where we have followed the judgment of apex court in **Balachandran Nair's** case, supra, and allowed the appeal. The same contentions are raised before this

court in this case. In such circumstances, the argument raised by the counsel for the appellant cannot be accepted in view of the judgment of the apex court in **Balachandran Nair's** case. The appellant has failed to adduce evidence showing that the deceased was aggravated and attributable to military service. No contra evidence was produced to disprove the report of the medical board. Learned Single Judge in out view was not justified in directing the respondents to disburse the military disability pension.

In such circumstances, we set aside the judgment of the learned Single Judge.

K.S.RADHAKRISHNAN, JUDGE

A.K.BASHEER, JUDGE

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